STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2004-313

May 18, 2004

PUBLIC UTILITIES COMMISSION
Investigation into the Routine Network Modification Requirements of the Federal Communication Commission's Triennial Review Order and the Rapid Response Complaints of Skowhegan Online, Inc. (4/21/04) and Cornerstone Communications Inc.'s (5/6/04)

NOTICE OF INVESTIGATION

WELCH, Chairman; DIAMOND, and REISHUS, Commissioners

I. SUMMARY

In this Order, we open an investigation into the interpretation and application of the routine network modification requirements of the Federal Communication Commission's (FCC) *Triennial Review Order (TRO)*.[1] We invite the submission of briefs and affidavits by all interested parties and set a date for a hearing.

II. BACKGROUND

A. ***Triennial Review Order*** **Requirements**

Paragraphs 630-641 of the *TRO* and 47 U.S.C. § 54.319(a)(8) address the obligation of incumbent local exchange carriers (ILECs) to perform routine network modifications on behalf of competitive local exchange carriers (CLECs) in order to provision CLEC unbundled network element (UNE) loop orders. Section 54.319(a)(8) states that the ILEC must make all routine network modifications to loop facilities used by CLECs where the loop facility has already been constructed. Routine network modifications are defined as activities that the ILEC "regularly undertakes for its own customers." 47 U.S.C. § 54.319(a)(8); *TRO* at ¶ 632. Both the Rule and the *TRO* further state that routine network modifications "include, but are not limited to, rearranging or splicing of cable, adding an equipment case, adding a doubler or repeater; adding a smart jack, installing a repeater shelf, adding a line card, deploying a new multiplexer or reconfiguring an existing multiplexer, and attaching electronic and other equipment that the incumbent LEC ordinarily attaches to a DS1 loop to activate such loop for its own customer."

[1] *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket 01-338 (rel. August 21, 2003) (*Triennial Review Order or TRO)*.

B. Skowhegan Online's Complaint

On April 21, 2004, Skowhegan Online, Inc. (SOI) filed a Rapid Response Complaint against Verizon Maine claiming that Verizon had improperly rejected four SOI orders for loops to provision Integrated Services Digital Network (ISDN) service.[2] SOI argued that the network modifications necessary for Verizon to provision SOI's orders are "routine network modifications" as defined in the *TRO* and that Verizon should be required to perform them on behalf of SOI. Initially, Verizon rejected SOI's orders for "incompatible loop technology" and "no facilities." Upon inquiry to SOI's Verizon contact, Paul Lynch, SOI learned that the reasons also included, "no capacity in the DLC" and "no copper." Finally, in responding to SOI's rapid response complaint, Verizon provided additional information concerning the reasons for Verizon's rejection of the specific orders.

PONs 033004–03 and 033004-04

- Initially rejected for "incompatible loop technology"
- Paul Lynch clarifies that there is "no capacity in the DLC"
- Verizon later clarifies that the lack of capacity in the DLC is due to the fact that it is being operated in Mode II, which limits the ability to provide high capacity services
- Verizon also clarifies that there are no spare F2 facilities running from the DLC to the end users

PON 041004–01

- Initially rejected for "no facilities"
- Paul Lynch clarifies that there is "no capacity in the DLC" and "no copper"
- Verizon later clarifies that the lack of capacity in the DLC is because it is being operated in Mode II and there are not four contiguous spare time slots, which are required to configure ISDN
- Verizon also clarifies that the "lack of copper" is a lack of homerun copper from the central office to the customer location

[2] ISDN service provides a 64 kb line capable of carrying voice and data.

PON 041904-01

- Initially rejected for "incompatible loop technology"
- Verizon later clarifies that the lack of capacity is due to the fact that the DLC is being operated in Mode II and there are not four contiguous spare time slots, which are required to provision ISDN

On May 6, 2004, the Rapid Response Process Team (RRPT) held a conference call with the parties. There was a lengthy discussion regarding the types of modifications that are necessary to change the mode of a SLC from Mode II to Mode I and whether Verizon should be required to undertake those modifications. SOI contended that the process was relatively simple and consisted entirely of activities included on the FCC's list of routine modifications. Verizon argued that the modification required several steps and that it would not re-configure the mode of a SLC to provide ISDN to its own retail customers. Verizon claims that, rather than switching modes, it would eventually upgrade the entire SLC to Litespan or other fiber-fed technology which would allow for the provision of advanced services such as xDSL and ISDN. Until it made the upgrade, Verizon would reject its own retail order for ISDN in the circumstances at issue. Verizon also pointed out that, even if the modes on the SLCs were changed, it still could not provision SOI's orders due to the lack of F2 facilities to the customers or the lack of four contiguous time slots needed to provision ISDN.

C. Cornerstone's Complaint

On May 6, 2004, Cornerstone filed a rapid response complaint alleging that Verizon had improperly refused to process Cornerstone IDSN Digital Subscriber Line (IDSL)[3] service orders in several Verizon exchanges. Cornerstone contended that Verizon was unwilling to perform the routine network modifications necessary to enable Verizon to provision Cornerstone's orders. Cornerstone specifically contended that the modifications necessary to provision its orders were "swapping of a couple of electronics cards in the CO [central office] and the RT [remote terminal], and the insertion of T1 repeater cards into already existing repeater housings, all of which are clearly and specifically identified by the FCC in the *TRO* as 'routine network modifications' which Verizon must perform for its competitors."[4] Verizon contends that all of Cornerstone's orders involve SLCs operating in Mode II which do not support the provision of

[3]IDSL is a method of providing xDSL of ISDN lines.

[4]Cornerstone also raised the issue of Verizon's insistence that Cornerstone sign an amendment to its interconnection agreement before Verizon would perform any routine network modifications. This issue is being addressed in Docket No. 2004-135, *Verizon Maine, Request for Arbitration*. *See* Examiner's Report issued on May 6, 2004.

ISDN circuits. Verizon further contends that, "VZ-ME's practice is not to undertake such a conversion [from Mode II to Mode I] as a means for provisioning individual ISDN retail orders unless there is an indication of significant growth in the area." Verizon's supplemental responses to Cornerstone's orders are as follows:

C5AS5254

- Original Verizon responses: "Address not within Livewire Range," "Address not found in Livewire," "Need Nearby Telephone #," "Firm Order Confirmation," and "Denial Incompatible Loop Technology"
- Updated response: SLC in Mode II – would require "extensive work" and additional facilities to convert to Mode I
- No facilities for T1s

C5YF4870

- Original Verizon response: "Both SLC systems are mode2 incompatible loop"
- Updated response: SLC could be converted to Mode I – would require cards, splicing at the RT and testing

C5XV3698

- Original Verizon responses: "Addresses not in Livewire Range," "Firm Order Confirmation," "Address not found in Livewire," "Address not found in Livewire," and "Denial Incompatible Loop Technology"
- Updated response: Mode II system would require extensive work and additional facilities to convert it to Mode I
- No facilities for T1s

C5AS521

- Original Verizon responses: "Addresses not in Livewire Range," "Firm Order Confirmation," "Address not found in Livewire," "Reject – ACTL and End-User LSO not matched"
- Updated response: Mode II system would require extensive work and additional facilities to convert to Mode I
- No facilities for T1s

C5XE9014

- Original Verizon responses: "Firm Order Confirmation," "No facilities available, service denied," "Denied. No facility mod could be performed to provide service," "(1) No copper available (F1, I guess); (2) Integrated SLC; (3) No EB Slots."

- Updated response: Universal Mode II system could be converted by extending T1s out of an existing fiber fed litespan ahead on copper to this site; an engineering work order would be needed for splicing, repeater cards, cards at both sites, and testing

III. NOTICE OF INVESTIGATION

The two rapid response complaints described above require interpretations of the FCC's *TRO* requirements on routine network modifications. In order to base our decision on a more complete record, we open this Investigation and request that all interested parties submit legal briefs and supporting affidavits which address the following questions:

1. Must an ILEC perform a network modification included in the FCC's list even if the ILEC does not perform the modification for its own retail customers?

2. Must an ILEC perform as many network modifications as necessary to provision an existing loop, so long as the modifications are included on the FCC's list and/or the ILEC performs the modifications for its own retail customers?

3. What modifications are necessary to convert a SLC 96 unit from Mode II to Mode I?

   For each modification, please indicate:

   a. Whether it is on the FCC's list; and
   b. Whether Verizon performs this modification for its own retail customers.

4. **For Verizon only:** How many SLC 96 units in Mode II are operating in Verizon-ME's network today?

5. **For Verizon only:** How many SLC 96 units has Verizon-ME converted from Mode II to Mode I in the last 5 years?

6. **For Verizon only:** How many SLC 96 units in Verizon-ME's network have been upgraded from Mode II to Litespan or other "next generation" technology in the past 5 years?

7. What modifications are necessary to provision T1s between an RT and the CO? Are those modifications contained on the FCC's list? Does Verizon perform these modifications to fill retail orders?

8. What modifications and service-affecting steps are necessary to reconfigure a T1 so that there are four contiguous time slots? Are those modifications contained on the FCC's list? Does Verizon perform these modifications to fill retail orders?

9. Is the requirement that ILECs perform routine network modification based on a situation specific analysis? In other words: if an ILEC shows that it would not perform the requested modifications based on the specific circumstances surrounding the request, is it excused from performing the modification?

IV. SCHEDULE

The issues raised in this Investigation directly impact both Verizon and the CLECs and, thus, we set an aggressive schedule for resolution of this matter:

Opening legal briefs and affidavits	**June 3, 2004**
Reply briefs and affidavits	**June 11, 2004**
Hearing and oral argument	**June 23, 2004 at 9:00 am**

Dated at Augusta, Maine, this 18th day of May, 2004.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Diamond
Reishus